

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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RAFAEL RIVERA,

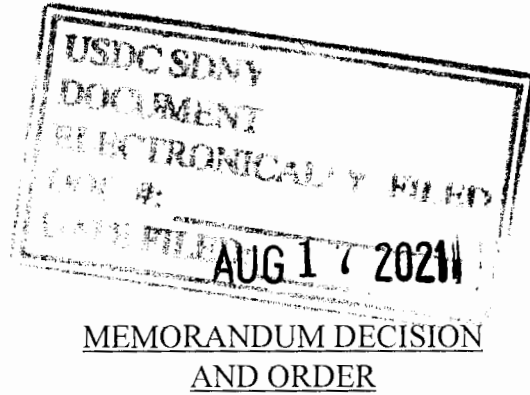
Plaintiff,

-against-

UNITED STATES OF AMERICA,

Defendant.
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GEORGE B. DANIELS, United States District Judge:



17 Civ. 5103 (GBD) (DF)

Pro se Plaintiff Rafael Rivera brings this action against the United States of America pursuant to 42 U.S.C. § 1983, alleging violations of constitutional rights while incarcerated. On February 4, 2020, Magistrate Judge Debra Freeman issued an order requiring Plaintiff to show cause in writing by February 21, 2021 why this case should not be dismissed for failure to prosecute. Plaintiff did not respond. On October 2, 2020, Defendant filed a motion to dismiss the Complaint for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, (Def's Not. of Mot. to Dismiss, ECF No. 63, at 1), to which Plaintiff has not responded.

Before this Court is Magistrate Judge Freeman's April 28, 2021 Report and Recommendation (the "Report"), recommending that this case be dismissed for failure to prosecute pursuant to Rule 41(b). (Report, ECF No. 66, at 1.) Magistrate Judge Freeman advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections on appeal, and directed that a copy of the Report be mailed to Plaintiff at the address listed on the Docket. (*Id.* at 1-2). No objections have been filed. Having reviewed the Report for clear error and finding none, this Court ADOPTS the Report in full.

A court “may accept, reject, or modify, in whole or in part, the findings or recommendations” set forth in a magistrate judge’s report. 28 U.S.C. § 636(b)(1)(C). A magistrate judge’s report to which no objections are made is reviewed for clear error. *See Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006) (citations omitted). “In clear error review, a court should reverse a finding only if it is ‘left with the definite and firm conviction that a mistake has been committed,’ and not merely if it ‘would have decided the case differently.’” *Hernandez v. City of New York*, No. 11 Civ. 6644 (KPF) (DF), 2015 WL 321830, at *2 (S.D.N.Y. Jan. 23, 2015) (quoting *Easley v. Cromartie*, 532 U.S. 234, 242 (2001)).

Rule 41(b) authorizes a district court to dismiss an action “[i]f the plaintiff fails to prosecute or to comply with . . . a court order.” Fed. R. Civ. P. 41(b). “The primary rationale underlying a dismissal under [Rule] 41(b) is the failure of [a] plaintiff in his duty to process his case diligently.” *Lyell Theatre Corp. v. Loews Corp.*, 682 F.2d 37, 43 (2d Cir. 1982) (citations omitted). District courts consider five factors when deciding whether to dismiss an action under Rule 41(b):

(1) the duration of the plaintiff’s failure to comply with the court order, (2) whether plaintiff was on notice that failure to comply would result in dismissal, (3) whether the defendants are likely to be prejudiced by further delay in the proceedings, (4) a balancing of the court’s interest in managing its docket with the plaintiff’s interest in receiving a fair chance to be heard, and (5) whether the judge has adequately considered a sanction less drastic than dismissal.

Baptiste v. Sommers, 768 F.3d 212, 216 (2d Cir. 2014) (per curiam) (citation omitted).


Here, Magistrate Judge Freeman appropriately found that dismissal is warranted. (Report at 1.) Plaintiff has not responded to the order to show cause issued February 4, 2020. (Report at 1; Order to Show Cause, ECF No. 61, 1.) Nor has Plaintiff responded to Defendant’s motion to dismiss filed on October 20, 2020. (Report at 1; Notice of Motion to Dismiss Compl., ECF No. 63, 1.) Further, Plaintiff has failed to communicate with the Court in any way since, at least, October 2020. (Report at 1.)

Plaintiff's complaint is dismissed without prejudice.

The Clerk of Court is directed to mail a copy of this memorandum decision and order to Plaintiff.

Dated: New York, New York
August 17, 2021

SO ORDERED.



GEORGE B. DANIELS
United States District Judge